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SUBJECT: GSP DELEGATION PROMOTES LABOR LAW ENFORCEMENT

[11.](#) (U) Summary: An inter-agency USG delegation visited Guatemala on February 23-24 to review GOG compliance with GSP labor conditions and encourage the new government to take steps to protect fundamental worker rights. The group met with GOG officials, union, and business leaders to discuss the issues raised in outstanding GSP petitions. The delegation also conducted a press roundtable which generated articles in all major dailies and AUSTR Clatanoff participated in a radio program to describe USG concerns about labor rights enforcement.

[12.](#) (SBU) The GOG reported advances in the investigation and prosecution of cases of past violence against union leaders, ongoing efforts to streamline the labor justice system, and resolution of some cases involving reinstatement of workers illegally fired for unionizing activities. The Inter-Institutional Working Group professed a strong GOG commitment to enforce its labor laws as well as to promote reforms to address gender and union discrimination in the workplace. The Embassy considers the recent advances to represent significant steps in compliance with GSP conditions, and recommends that the GSP petition review be closed. The delegation emphasized to the GOG the need for further steps and progress on CAFTA Track Two in the area of labor law enforcement and labor law reform. We will continue to encourage and report any further progress. End Summary.

[13.](#) (U) The USG delegation was comprised of William "Bud" Clatanoff, Assistant USTR for Labor; Charlotte Roe, Senior Labor Advisor, WHA/PPC; Amy Holman, Trade Economist, EB; and Carlos Romero, International Economist, ILAB/USDOL. In each meeting, the delegation explained the USG GSP review process and expressed concern about the core issues contained in open petitions submitted in December 2002, including:

- the investigation and prosecution of cases of past violence against trade unionists;
- the speed and agility of the labor justice system;
- reinstatement of workers illegally-fired for unionizing activities;
- efforts to combat employment discrimination, especially blacklisting of union members; and,
- the need to strengthen the labor inspection system.

Minister of Labor Outlines Priorities

[14.](#) (SBU) On February 23, the delegation met with Minister of Labor Jorge Gallardo, First Vice Minister of Labor Cesar Castillo, Second Vice Minister of Labor Mario Gordillo, ministerial advisor Alejandro Arqueta, Ministry Inspector General Celeste Ayala, and other members of the ministry. Gallardo welcomed the delegation and pledged full GOG cooperation. AUSTR Clatanoff presented the delegation and explained the background for the visit, including the specific areas of concern outlined above. In addition to prompting the GSP petition review, the labor rights situation in Guatemala would feature prominently in U.S. Congressional debate over CAFTA approval, he said. For the unilateral GSP review, the USG would review the GOG's steps taken to protect labor rights; those same steps, taken in advance of the U.S. Congressional debate over CAFTA, would also improve the prospects of CAFTA approval. We refer to actions taken in advance of CAFTA to strengthen labor laws and their enforcement as CAFTA's "Track Two." CAFTA's "Third Track" involves USG support for capacity building measures, which include a new \$6.7 million regional project to promote public awareness of labor rights and improve labor law administration including inspections, he said. Ms. Roe emphasized the need for continued and visible GOG action to protect labor rights.

[15.](#) (SBU) Minister Gallardo, who took office five weeks earlier, told the delegation that he intends to request an increase of the MOL budget during this year and next, to address severe budget constraints and low salaries, especially in the inspection branch. The minister said he would give the inspectorate priority attention, emphasizing the need to combat corruption in the ranks through training and oversight (which he referred to as "systematization"). He said the ministry was in discussions with the Central

American Economic Integration System (SIECA), to provide re-training to inspectors, and plans to reorganize the inspections division in consultation with workers and employers. He highlighted the creation of two new inspector units, one for the maquila sector and the other to combat child labor. He said encouraging dialogue between social groups and building consensus was a high priority for this government, as was implementing a long-term vision for the ministry. To do so, he has been meeting with employers and unions and hopes to create a unit to help resolve and prevent conflicts through dialogue. Gallardo said the GOG was prepared to present a report to the delegation responding to issues raised in the GSP petitions the following day. In response to a question from Mr. Romero about cooperation between the Ministries of Labor and Economy to enforce labor rights in the maquila sector, Gallardo said he believed this cooperation must continue, and the MOL must use all GOG institutions to convince employers of the government's intention to apply the law.

16. (SBU) Vice Minister Gordillo said the GOG is very concerned about resolving cases cited in the petitions, and wishes to take measures to address them. The ministry is also concerned about cases of violence and maintains close communication with the Special Prosecutor for Crimes Against Unionists who is investigating them. Mr. Clatanoff said it is critical to prevent any future violence. LabAtt noted that the UN-GOG agreement on formation of a Commission to Investigate Clandestine Groups includes a mandate to investigate attacks against trade unionists and other human rights defenders. Gordillo added that the MOL hopes to strengthen its inspections and fines departments, as well as its Defense of Worker Rights Unit. Defending worker rights in the maquila sector is another priority, and the ministry is coordinating with the Ministry of Economy (which controls export tax benefits) on this issue, through the maquila sub-commission of the GOG Inter-Institutional Labor Group.

17. (SBU) Asked about the prospects for pending labor reforms, Minister Gallardo said that the legislative package pending in the last Congress has been sent back to committees, which have 60 days to act on them. The ministry has encouraged Congress to seek consensus from all sectors on the reforms as soon as possible, even if this takes additional time. Vice Minister Gordillo pointed out that no one party has the majority in Congress. Mr. Argueta said that in addition to responding to U.S. interest and concern, it is important for Guatemalan workers and employers to agree on their mutual interests. Mr. Clatanoff agreed that efforts to build consensus and "ownership" are very important, especially given the historical context of labor relations in Guatemala. He noted the strong differences between GSP review, which is unilateral, and CAFTA's labor chapter, which is not.

Inter-Institutional Group Reports Progress

18. (SBU) On February 24, the Ambassador accompanied the delegation to a meeting of the GOG's Inter-Institutional Labor Group, hosted by Vice Minister of Foreign Affairs, Carlos Ramiro Martinez. Also attending were Vice Ministers of Labor Castillo and Gordillo; Otto Marroquin, Supreme Court Magistrate; Beatriz de Barrera and Rolando Cabrera, Labor Court justices; Mariano Rayo, President of the Congressional Economic Commission; Marco Antonio Cortez Sis, Special Prosecutor for Crimes Against Trade Unionists; Ambassador Maritsa de Vielman of the MFA; Mario Lopez, the GOG CAFTA labor negotiator from the Ministry of Economy; and representatives from the Solicitor General's Office, the tax authority (SAT) and the Social Security Institute (IGSS).

19. (SBU) Vice Minister Martinez presented the GOG's latest report on the GSP petitions, which have been delivered to Washington agencies by the delegation. The report included the following information on advances made in labor law enforcement and commitments by the Berger administration:

-- a new vision: of permanent social dialogue between employers, workers and political actors in compliance with international trade agreements and ILO commitments;

-- advances in the administration of labor justice: administrative efforts to extend coverage and competence of labor court judges;

-- labor law reform: including 2001 reforms and pending (2003) reforms that will address gender discrimination, strengthen child labor protections and protect the rights of domestic workers

-- labor law enforcement and compliance: maquila sector efforts coordinated between MOL and Economy Ministry; efforts to strengthen the labor inspection function; formation of two new inspection units; resolution of the Choi Shin/Cimatextiles case; modernization of the MOL and case flow tracking system for inspection and fines divisions;

renewed MOL efforts to support the National Commission for the Prevention and Eradication of Child Labor and Protection of Adolescent Workers;

-- progress in cases of violence against trade unionists: arrest on February 20, 2004 of Mario Roberto Ortiz Barranco for the murder of Oswaldo Monzon Lima; February 12, 2004 request to judge to call the prime suspect in the murder of Baldomero de Jesus Ramirez; February 17, 2004 request by District Attorney to reopen the investigation of the murder of Baudilio Amado Cermenio; request for a hearing on the intended homicide case against Julio Enrique de Jesus Salazar Pivaral for threats, slight injuries and illegal detention of a union member on his plantation.

-- progress on labor cases cited in GSP petitions: several cases are still in the courts; however, most (8 of 12), with the most notable exception being the Finca Maria Lourdes case, are reported resolved amicably.

10. (SBU) In response, AUSTR Clatanoff praised the formation and efforts of the Inter-Institutional Group, and said the progress reported would be favorably considered by the USG. In particular, he acknowledged the Special Prosecutor for his recent success in prosecuting cases of violence, urged him to follow arrests with prosecutions and investigations with further arrests; and the Ministries of Labor and Economy for their coordinated efforts to enforce labor law in the maquila sector. These are concrete advances we hope will continue, he said, and expressed cautious optimism that Guatemala has ended a history of violence against labor leaders. AUSTR Clatanoff then asked what progress had been made on the issue of effective enforcement of labor court decisions in favor of illegally-fired union members, and inquired about the prospect of further labor code reforms.

11. (SBU) Labor Court magistrate de Barrera said there had been advances in reinstatement of illegally-fired workers in the public (municipal government and national level) sector, citing a recent case in the municipality of Coban, Alta Verapaz province. Labor court judges, she remarked, are working very hard to eliminate backlogs, even resorting to mobile courts to augment the capacity of Guatemala's overcrowded courts. The problem that remains, she said, is employer resistance to court rulings in the agricultural plantation sector. These employers resist by changing their corporate identity and using legal delaying tactics to prevent effective reinstatement of illegally-fired workers. Often, these cases turn into land disputes, as workers squat on land they demand as compensation for what they are owed by the landowner.

12. (SBU) Noting that the reform package had been sent back to Commission, AUSTR Clatanoff asked officials to comment on the prospects for Congressional action on a second generation of labor law reform. Vice Minister Gordillo said this Administration wants to see the legislation passed, and is working to build consensus for the reforms. Vice Minister Martinez added that independently from CAFTA, the government realizes it needs to harmonize its labor law with ILO recommendations.

Business and Union Leaders Briefed

13. (SBU) On February 24 the Ambassador hosted a lunch in honor of the delegation with union leaders which included Jose Pinzon, SecGen of the Union of Guatemalan Workers (UGT); Nery Barrios, SecGen of the Unity of Social and Popular Action confederation (UASP); and Reynaldo Gonzalez, SecGen of the Bank Workers union (FESEBS). The union leaders expressed appreciation for USG GSP and CAFTA pressure on Guatemala. Barrios credited the Berger administration for taking steps to resolve some pending labor disputes. Pinzon commented that in a recent meeting labor court judges had told him the government had asked the labor judges to clean out their case backlogs, "because CAFTA is coming." Gonzalez agreed, saying that some labor judges were "pulling some old cases out of the drawers" and almost always ordering the reinstatement of fired workers "because CAFTA requires it."

14. (SBU) However, the union leaders expressed concern about newer, more subtle means of undermining unions by both employers and government. What is most lacking, according to Gonzalez, is the political will to reverse these attitudes. Mr. Romero described in detail the contents of the CAFTA labor chapter, and AUSTR emphasized the benefits to workers of trade liberalization (increased employment opportunities and higher real wages resulting in part from cheaper imports). He agreed that worker benefits under CAFTA require from each government the political will to enforce the "rules of the game." Although none of these unions support CAFTA, the conversation was respectful and helped dispel misconceptions held by union leaders about CAFTA labor provisions and enforcement mechanisms.

¶15. (SBU) A meeting with employer representatives also helped to dispel misconceptions about another CAFTA Track Three issue. On February 23 the delegation met with Carlos Arias of the Chamber of Industries and Rolando Figueroa of the garment manufacturers export association (VESTEX). Both men are members of the main employer group's (CACIF) labor commission, but requested a meeting outside CACIF because of lack of consensus in CACIF about whether to support the "Export Success in Central America" (ESCA) initiative. After discussing the importance of effective labor law enforcement in the context of GSP review and CAFTA consideration by the U.S. Congress, the delegation addressed CACIF's concerns about the private-sector-led ESCA proposal. Reassured that the ESCA, which calls for development of a unitary voluntary labor standard, would apply only to the textile sector; that those standards in each country would incorporate national labor law and (only) the ILO conventions each country had ratified; that only the ILO would be appropriate to monitor the standards; and after explaining that the phrase "best practices" referred only to labor monitoring procedures, not the uniform standard itself; Arias said that CACIF's concerns were fully met and he believed it would now fully support the initiative.

Human Rights Commissioner Offers Help

¶16. (SBU) The delegation met on February 23 with Frank LaRue, President of the Presidential Commission on Human Rights (COPREDH) and a former leader of a prominent NGO human rights organization. LaRue said he was scheduled to attend a meeting with the President and Vice President with Bishop Ramazzini of San Marcos province. The issue to be discussed was to be the land/labor conflict at the Finca Maria Lourdes in Quetzaltenango province (which is cited in the open AFL-CIO GSP petition), which is owned by a member of the First Lady's family. LaRue said he would use that to try to encourage a resolution of the conflict in favor of the workers/squatters and, more generally, to ensure that court orders are applied more even-handedly. LaRue described his commission's mandate as consisting of human (and labor) rights oversight of other GOG ministries. He said that corruption was a barrier to effective enforcement, and suggested that in future COPREDH might conduct an audit of the Ministry of Labor's inspectorate division. Learning of the CAFTA labor chapter provision for the establishment of a unit in each partner's labor ministry to process labor submissions, LaRue said this might be another area where COPREDH could help by conducting oversight of the establishment and functioning of that office, if CAFTA takes effect. The delegation informed LaRue that a USDOL team to design future technical cooperation activities would be in-country beginning March 9, and encouraged him to meet with them.

Comment

¶17. (SBU) The delegation's visit advanced U.S. interests at several levels. Most importantly, it emphasized the need for active enforcement of labor rights and concrete progress in the near-term. The delegation also raised public, employer, and union awareness of the content of the CAFTA labor chapter, and effectively advocated for sustained GOG efforts to protect fundamental labor rights and effectively enforce its labor laws.

¶18. (SBU) While much remains to be done by the GOG to translate its commitments into further advances, the Embassy believes the efforts reported by the GOG to date constitute positive steps in the right direction. Of particular significance was the arrest in the Monzon Lima case, the Labor Minister's commitment to strengthen the labor inspectorate, efforts to strengthen the labor justice system, the resolution of many of the labor cases mentioned in the petitions, and the GOG's commitment to continue inter-ministerial coordination to enforce labor rights in the maquila sector.

¶19. (SBU) We therefore strongly recommend that the Trade Policy Sub-Committee consider the closure of the GSP petition review for Guatemala.

HAMILTON